

REMARKS

Claims 1-48 are currently pending in the patent application. Of these pending claims, only Claims 1, 22, and 35 are independent claims. Claims 2-21, 23-34, and 36-48 depend from these claims. As the Court noted in *In re Fine*, “dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.” 5 U.S.P.Q.2d 1569, 1600 (Fed. Cir. 1988). Using this same rationale, dependent claims cannot be anticipated if the independent claims from which they depend are not anticipated. While it is noted that Claims 11, 17-18, 28-29, and 44 represent allowable subject matter, these are dependent claims. Since the Applicants respectfully assert that independent claims 1, 22, and 35 are allowable, dependent claims 2-21, 23-34, and 36-48 are also allowable. Thus, Applicants respectfully request allowance of all the pending claims in view of the subsequent remarks regarding the above-mentioned independent claims.

I. Remarks re Claim Objections

Previously, Claim 29 was objected to because it contained two periods. With this response, this claim has been amended to remove the extra period. Consequently, the Applicant requests that the objection to this claim is removed.

II. Remarks re 35 U.S.C. §102 rejections

In the Office Action, the Claims 1, 3-10, 12-16, 19-22, 24-27, 30-35, 37-43, and 45-48 are rejected under 35 U.S.C. § 102 as allegedly unpatentable over U.S. Patent No. 6,031,454 issued to Lovejoy on February 29, 2000 (“Lovejoy”). Since this anticipation rejection applies to independent claims 1, 22, and 35 and the allowability of the dependent claims necessarily follows allowable independent claims (see *In re Fine*, Id.), the remaining comments regarding anticipation will focus on these independent claims.

A proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). The test is the same for a process. Anticipation requires identity between the claimed process and a process of the prior art. The claimed process, including each step thereof, must have been described or embodied, either expressly or inherently, in a single reference. *See, e.g., Glaverbel S.A. v. Northlake Mkt'g & Supp., Inc.*, 45 F.3d 1550, 33 USPQ2d 1496

(Fed. Cir. 1995). Those elements must either be inherent or disclosed expressly. *See, e.g., Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir. 1988); *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991). In summary, the single prior art reference must properly disclose, teach or suggest each element of the claimed invention. Moreover, “every element of the claimed invention must be literally present, arranged as in the claim.... The identical invention must be shown in as complete detail as is contained in the patent claim.” *See, e.g., Richardson v. Suzuki Motor Company Co.* 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Lovejoy discloses a worker-specific exposure monitor and method for surveillance of workers. “Thus, it is an objective of ... [Lovejoy] to provide a convenient and fully automated method for the collection of exposure data for workers throughout their life by the use of a universal monitor and to allow individuals to custom-tailor their own monitor according to their given concerns, their job environments and their known or potential medical and genetic susceptibilities.” Col. 3, lines 53-63. In other words, this conventional system monitors a worker throughout his lifetime using exposure data. In fact, when “data are received, the software calculates cumulative exposures not only over the past 24 hours but over the entire work history, interprets the exposure patterns according to pre-recorded standards, and sends a worker-specific warning signal back to the console and/or the monitor in case of an overexposure. Should an overexposure occur in one area of the plant, the other workers potentially at risk are automatically notified and so is the Labor Union representative and/or the plant manager.” Col. 8, lines 8-18. In other words, the only analysis on the exposure data after it is collected described in Lovejoy produces a cumulative exposure for the worker from the worker’s exposure data.

Claim 1 is not anticipated by Lovejoy for at least the reason that Lovejoy does not disclose every limitation recited in this claim. More specifically, this claim recites the following limitations: collecting real-time condition data indicative of conditions from at least one sensor at a particular location; collecting real-time position data indicative of the location of the sensor; repeating the steps of collecting the real-time condition data and the real-time position data over time at one or more locations; and correlating the collected real-time condition data with the collected real-time position data to produce correlated data indicative of conditions at the one or more locations over

time. While paragraph 6 in the Office Action identifies Claim 1, it is unclear exactly what portion of Lovejoy discloses the recited claim limitations. If the Applicant has overlooked this section, he respectfully requests that the Examiner more clearly identify the relevant sections.

Claim 22 is not anticipated by Lovejoy for at least the reason that Lovejoy does not disclose every limitation recited in this claim. More specifically, this claim recites an apparatus for generating data indicative of conditions with the following limitations: at least one sensor for collecting realtime condition data indicative of conditions at a particular location; a receiver for collecting real-time position data indicative of the location of the sensor, wherein the real-time condition data and the real-time position data are collected at one or more locations over time; and a correlator for correlating the collected real-time condition data with the collected real-time position data to produce correlated data indicative of conditions at the one or more locations over time. While the paragraph 6 in the Office Action identifies Claim 22, it is unclear exactly what portion of Lovejoy discloses the recited claim limitations. If the Applicant has overlooked this section, he respectfully requests that the Examiner more clearly identify the relevant sections.

Claim 35 is not anticipated by Lovejoy for at least the reason that Lovejoy does not disclose every limitation recited in this claim. More specifically, this claim recites an apparatus for analyzing data indicative of conditions with the following limitations: a receiver for receiving data including real-time condition data indicative of conditions collected from at least one sensor at a particular location correlated with real-time position data indicative of the location of the sensor, wherein the condition data and the position data are collected at one or more locations over time; and a processor for analyzing the received data to determine conditions at the one or more locations over time. While paragraph 6 in the Office Action identifies Claim 35, it is unclear exactly what portion of Lovejoy discloses the recited claim limitations. If the Applicant has overlooked this section, he respectfully requests that the Examiner more clearly identify the relevant sections.

Even though the Office Action does not include a clear indication of the claim limitations recited in Claims 1, 22, and 35, the Applicant includes the following explanation for the sole purpose of being fully responsive to other statements in paragraph 6 of the Office Action. Moreover, the Applicant reiterates that as mentioned above with regard to the individual claims Lovejoy does not disclose the subject matter recited in Claims 1, 22, and 35 and cannot be anticipated by this reference. With this in mind, the remaining description will address statements from paragraph 6 about what Lovejoy supposedly discloses.

According to paragraph 6 in the Office Action, Lovejoy discloses “at least one sensor of a radiological, chemical or other toxic agent or a plurality of individual detectors, each of which is specific to a particular hazard found in a particular environment.” Unfortunately, it is not clear exactly where Lovejoy discloses the quoted language. However, the language resembles the following language from Claim 1 of Lovejoy: “...at least one sensor of a radiological, chemical or other toxic agent in the environment surrounding the person, said sensor being operably connected to the microprocessor and removably attached to the monitor, wherein the microprocessor, power supply, RF transceiver, and at least one sensor are electrically connected together.” Even if the statement in the Office Action is referring to the language of Claim 1, it is unclear how the quoted language from this claim can be identical to any claim limitation recited in Claims 1, 22, and 35. Even though suggested, there is *no* mention of real-time condition data indicative of conditions from a sensor at a particular location. In fact, there is no mention or reason to infer from this claim that data collection is done in real-time.

In paragraph 6 of the Office Action, there is also an assertion that the real-time geolocating means of Lovejoy collects real-time position data indicative of the location of the sensor. Unfortunately, it is not clear exactly which real-time geolocating means of Lovejoy discloses the quoted language. Consequently, it is even more difficult to assess whether this reference collects position data is indicative of the location of the sensor. The reason is because generally sensors have a finite response time associated with them. This time represents the time period between when something is incident upon the sensor and when the sensor can stabilize producing a corresponding output. Since response times vary with the sensor type, sensing method, and the sensor implementation, it is *impossible* to evaluate whether the geolocating means of Lovejoy referred to in paragraph 6 actually collects real-time position data indicative of the location of the sensor.

Moreover, paragraph 6 of Lovejoy also makes an assertion that the geolocating means of Lovejoy, “may be a GPS.” While the Applicant will concede that this term is mentioned within Lovejoy, the section describing geolocating begins at col. 8, line 50. Within this section, an alternative to GPS is described in col. 8, line 59 through col. 9, line 16. In fact, the geolocating solution described in this section never purports to use GPS, except in a very limited sense to establish the location of a known receiver, which is needed before any calculation can be done. (See col. 9, line 67 through col. 10, line 3). Rather, the geolocating system that is an alternative to GPS and is described in considerable detail in Lovejoy uses RR tags based on time of flight principles.

For the sake of brevity, the Applicant will not weary with the Examiner with an extensive discussion in the vast difference between GPS systems and the RR tag system of Lovejoy. However, the Applicant can provide this information if requested. Consequently, it is unclear how any of the geolocating means of Lovejoy is identical to any claim limitations recited in Claims 1, 22, and 35.

Paragraph 6 of the Office Action also includes an allegation that “continual collecting of realtime position and exposure/environmental sensor data” is the same as repeating the steps of collecting … at one or more locations. Unfortunately, the Applicant cannot locate the section of Lovejoy that discloses the “continual collecting of realtime position and exposure/environmental sensor data.” If the Applicant has overlooked this section, he respectfully requests that it is more explicitly identified. As mentioned above, Lovejoy does not disclose collecting real-time position data indicative of the location of the sensor and cannot consequently disclose repeating the step of collecting real-time position data over time. The same logic applies to collecting real-time condition data. Consequently, it is unclear how the above mentioned assertion is identical to any limitations recited in Claims 1, 22, and 35.

Finally, paragraph 6 in the Office Action includes an allegation that Lovejoy discloses “correlating the collected real-time collected data indicative of condition at the one or more locations over time,” as “the correlation of real-time position data with exposure or environmental data.” Even if Lovejoy discloses “correlating the collected real-time collected data indicative of condition at the one or more locations over time,” Claims 1, 22, and 35 do not recite any such limitation. For reasons previously mentioned, the Applicant is not aware of any section of Lovejoy that discloses real-time position data. It follows that Lovejoy cannot disclose the correlation of real-time position data. As a matter of fact, there are explicit sections in Lovejoy that suggest the contrary. Column 8, lines 8-18, which were mentioned above, confirm that there is no additional analysis disclosed other than calculating the cumulative exposure data *even though* there is a notification sent to the worker. Neither Claim 14 nor Claim 17 of Lovejoy discloses contradictory information. Even though there is a correlate means mentioned in Claim 14, neither this claim nor Claim 17 mention correlating real-time position data with real-time condition data.

In short, the numerous assertions within paragraph 6 of the Office Action about what Lovejoy discloses are erroneous. Lovejoy does not disclose the subject matter recited in Claims 1, 22, and 35. If the Applicant has overlooked this section, he respectfully requests that it is more explicitly identified. As a result, Lovejoy cannot anticipate Claims 1, 22, and 35, which means

that these claims are patentable in view of Lovejoy. Therefore, claims that depend from the claims are patentable as explained above. With this in mind, the Applicant respectfully requests that the rejections to Claims 1, 3-10, 12-16, 19-22, 24-27, 30-35, 37-43, and 45-48 are removed.

III. Remarks re 35 U.S.C. §103 rejections

In the Office Action, Claims 2, 23, and 36 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent Application with Publication No. 2004/0004547 that published on January 8, 2004 on behalf of Richard Appelt *et al.* (“Appelt”). Since this obviousness rejection only applies to these dependent claims and the Applicant asserts that independent claims 1 and 35 are allowable in light of the arguments included herein, then dependent Claims 2, 23, and 36 are allowable based on *In re Fine*, which was cited above. Therefore, the Applicant respectfully traverses the rejection of these claims.

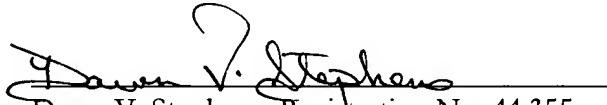
CONCLUSION

Claims 1-48 are currently pending in the patent application. Of these pending claims, only claims 1, 22, and 35 are independent claims. Since the Applicant respectfully asserts that these independent claims are allowable, dependent claims 2-21, 23-34, and 36-48 are also allowable on *In re Fine*, which was cited above. Thus, the Applicant respectfully requests allowance of all the pending claims in view of the above-mentioned remarks regarding the above-mentioned independent claims.

A fee of \$450.00 for a two-month extension is enclosed. The Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

NEEDLE & ROSENBERG, P.C.

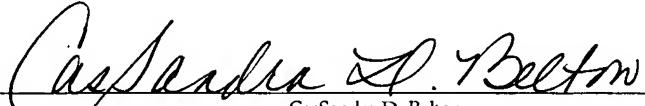

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